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IN THE

SUPREME COURT OF THE UNITED STATES

No. 728

OCTOBER TERM, 1958.

FELIX CORPSTEIN and JOSEPH CORPSTEIN, Individually, and CORPSTEIN BROTHERS, a Partnership, Consisting of FELIX CORPSTEIN and JOSEPH CORPSTEIN, *Petitioners*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

AND

No.

FELIX CORPSTEIN, JOSEPH CORPSTEIN, and CORPSTEIN BROTHERS, a Partnership, Consisting of FELIX CORPSTEIN and JOSEPH CORPSTEIN, *Petitioners*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

JOSEPH CORPSTEIN,
Nortonville, Kansas,
Pro Se.

E. L. MENDENHALL, INC., 1109 Oak Street, Kansas City 6, Mo. HArrison 1-3080

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Petitioner, Joseph Corpstein, *Pro Se*, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Tenth Circuit, entered in the above-entitled cases December 2, 1958.

CITATIONS TO OPINIONS BELOW.

The opinions of the District Court are not reported, but copies of same will be found on pages 38 and 77 of the Record. The opinion of the Circuit Court of Appeals, printed in Appendix B hereto has not yet been reported.

JURISDICTION.

The judgments of the Circuit Court of Appeals were entered December 2, 1958. R. 8 and 9; see Appendix "B". Jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED.

1. Congress has no power to regulate the petitioners' or individuals' commerce among the several states.

2. Congress through the Agricultural Adjustment Act of 1938 (Act of February 16, 1938, as amended, 52 Stat. 31, 7 U.S.C., 1952 ed., Section 1281 *et seq.*) violates Section 2, Article IV of the Constitution.

3. Congress has no power to engage in that commerce in which it has assumed the power to regulate.

4. There is no provision in the Constitution granting Congress Power to establish and regulate the value of commodities.

5. May penalties authorized by 7 U.S.C., 1952 ed., Supp. V, Section 1340(2), be enforced?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Article I, Sections 1 and 8 (Cl. 3) and Article IV, Section 2 (Cl. 1) of the Constitution and 7 U.S.C., 1952 ed., Sections 1281, 1282, 1335(a) (1) (2), 1336 and 1340(2).

STATEMENT.

Actions prosecuted by respondent to enforce penalty provisions 7 U.S.C., 1952 ed., Section 1340(2), for production of wheat in excess of marketing quotas during the years 1955 and 1956. Petitioners resist the actions on the ground the penalty authorized by the Statute 7 U.S.C., 1340(2), is not expressly imposed and may not, for that reason, be enforced and on the additional ground that the Agricultural Adjustment Act of 1938, as amended and supplemented (7 U.S.C., 1281 *et seq.*), is unconstitutional for the reason Congress has no power to regulate the petitioners' or individuals' commerce among the several states.

Summary judgments were entered by the Trial Court in favor of Respondent and against Petitioners February 7, 1958, in the amounts of $2,115.36 and $2,472.77. The cases were consolidated on appeal, June 9, 1958, by order of the United States Court of Appeals, Tenth Circuit. Rate of penalty for 1955 production was $1.13 per bushel and for 1956 production $1.07 per bushel.

Petitioners appealed from the judgments of the trial court April 3, 1958. Judgments of the trial court were affirmed by Court of Appeals for the Tenth Circuit, December 2, 1958.

Jurisdiction in the United States District Court for the District of Kansas is found in 7 U.S.C., 1376 and 28 U.S.C., 1345.

ARGUMENT.

1. Congress has power to regulate Commerce among groups such as nations, states, corporations, and companies. These are groups and as such they can abuse their commerce rights as they have power in that they are composed of many individuals working through ahead which represents the group. Individuals as such have no power, they merely have rights and the power of Congress to regulate Commerce of the group is for the protection of the individual right to commerce. If individual rights are regulated, then some will gain and others will lose their rights. The States gave Congress power to regulate their Commerce in order to prevent one state from erecting trade barriers, which prevents a free flow of Commerce among the States.

The amounts of Commerce that an individual can engage in among the several States or within a state can be much or little, depending on the will of the individual. Free men determine by their own actions if there is to be little or much commerce. Congress has no power to determine how much commerce there is to be among the people of the several states.

If men had no inalienable rights, then Congress could regulate their every action. The exercising of inalienable rights does affect Commerce, but there can be no abuse by an individual when he produces a good. If he produced nothing, then he would burden society for his needs.

2. Congress through this Act gives much Commerce to some states with rewards and penalties within a state while other states have no penalties for the production of

wheat by an individual. This Act destroys equal rights among the States. States are groups of people and the individual loses equal ri, ts with other people because of discrimination among the States. The petitioners were subject to penalties as citizens of Kansas while citizens of some states could produce wheat greatly exceeding that produced by the petitioners without being subject to the penalties involved. Commerce is the economic life or wealth of the individual. Because of this fact, Congress through this Act has created Barons, Lords, Dukes and Counts among the land gentry. This has occurred through regulating one individual's commerce as opposed to that of another individual. States in economic matters must ha e equal rights as individuals have equal rights.

3. Congress through this Act engages in that which is to be regulated. There is no provision in the Act that grants the Secretary the power to engage in Commerce, but the very nature of the Act compels the Secretary to engage in that which is to be regulated. The people have a right to engage in Commerce. The Congress has the power to regulate commerce among the several States and with foreign nations. Congress cannot engage in the commerce among the several States. There is no provision in the Constitution providing Congress with power to engage in that Commerce which can be regulated by Congress.

Congress forfeits its power to regulate commerce through this Act in that it must engage in commerce to carry out the provisions of the Act.

Congress has corrupted the Commodity Credit Corporation from a credit agency into a purchasing and marketing agency.

4. Congress has no power to determine the price or value of the Commodities in question. These powers be-

long to the individuals engaged in commerce, namely the buyer and seller in the marketing of crops. There is no provision in the Constitution providing Congress with power to regulate the value of commodities. Congress has power to coin money and to regulate the value thereof. The buyer and the seller have equal rights to determine the price or value of the commerce that they are engaged in. When Congress attempts to regulate the value of any commodity between the buyer and the seller, either or both parties engaged in commerce lose their equal rights.

5. The United States Court of Appeals for the Tenth Circuit has decided a federal question in conflict with an applicable decision of this Court by holding penalties authorized by 7 U.S.C., 1952 ed., Supp. V, 1340(2), may be enforced.

During the October term, 1878, this Court handed down its opinion in *Elliott* v. *Railroad Company*, 99 U.S. 573, which involved penalty for default under Section 122 of the internal-revenue act of June 30, 1864 (13 Stat. 284), as amended by the act of July 13, 1866 (14 *id.* 138). In syllabus 3 of that decision the Court stated:

> "Penalties are never extended by implication. Unless expressly imposed, they cannot be enforced."

The opinion was delivered by Mr. Chief Justice Waite and has never been reversed, vacated, modified or set aside and was cited with approval by the United States Court of Appeals, Sixth Circuit, June 18, 1958, in *Acker* v. *Commissioner of Internal Revenue*, 258 F.2d 568. In *United States* v. *J. H. Winchester & Co.*, 40 F.2d 472, the United States of Appeals for the Second Circuit in syllabus 3, stated:

> "Penalties are not created by implication."

The penalty in this case is not expressly imposed by Congress. 7 U.S.C., 1952 ed., Supp. V, Section 1340(2), provides:

> "During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of wheat. The rate of the penalty on wheat shall be 45 per centum of the parity price per bushel of wheat as of May 1 of the calendar year in which the crop is harvested."

Therefore, in order to determine whether the producer is subject to the penalty, it must be first determined how the quota is put into effect. The Act provides for the quota. 7 U.S.C.A., 1952 ed., Supp. V, Section 1335(a). Whenever in any calendar year the Secretary determines that "the total supply of wheat for the marketing year beginning in such calendar year will exceed the normal supply for such marketing year by more than 20 per centum * * * the Secretary shall, not later than May 15 of such calendar year, proclaim such fact and, during the marketing year beginning July 1 of the next succeeding calendar year and continuing throughout such marketing year, a national marketing quota shall be in effect with respect to the marketing of wheat". This section of the Act sounds final, and we would have no quarrel with the penalty provisions of the act if it was actually final.

However, it is not final nor is the penalty EXPRESSLY IMPOSED by the Section. The next section of the Act 7 U.S.C., 1952 ed., Section 1336, provides in substance, that between the date of the proclamation for a national marketing quota for wheat and July 25, the Secretary MUST CONDUCT A REFERENDUM of farmers who will be subject to the quota to determine whether they favor or oppose the quota, and if more than one-third of the farmers voting in the referendum, oppose the quota, the Secretary MUST,

prior to the effective date of the quota, SUSPEND ITS OPERATION.

A penalty, the imposition of which is subject to;

1. Quantity of a commodity on hand;
2. The proclamation of that fact by the Secretary of Agriculture;
3. The conduct of a referendum;
4. The will of a very limited group of voters at the referendum; and
5. The result of the referendum,

certainly does not meet the rule laid down by this Court, and since followed by other United States Courts and practically every state court of last resort, that "unless expressly imposed, the penalty cannot be enforced."

If it is not expressly imposed, this Court has said it cannot be enforced. In defining the adverb, "expressly", this Court said in *Magone* v. *Heller*, 150 U.S. 70, October 30, 1893:

> "The adverb 'expressly' in its primary meaning, denotes precision of statement, as opposed to ambiguity, implication, or inference, and is equivalent to 'in an express manner,' or 'in direct terms,' it is also commonly used to designate purpose, and as equivalent to 'especially,' or 'particularly,' or 'for a distinct purpose or object'."

In Webster's Dictionary, for instance, the definition of "expressly" is: "In an express manner; in direct terms; with distinct purpose; particularly; as, a book written expressly for the young".

We submit that the penalty is not expressly imposed by Congress and for that reason cannot be enforced.

JOSEPH CORPSTEIN,
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Pro Se.

APPENDIX A

Constitutional Provisions

ARTICLE I, SECTION 1:

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

ARTICLE I, SECTION 8, CL. 3:

The Congress shall have power • • • To regulate commarce with foreign nations, and among the several states and with the Indian Tribes.

ARTICLE IV, SECTION 2, CL. 1:

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Statutory Provisions

7 U.S.C., 1952 Ed.

SECTION 1281. SHORT TITLE.

This chapter may be cited as the "Agricultural Adjustment Act of 1938". Feb. 16, 1938, 3 p.m., c. 30, Sec. 1, 52 Stat. 31.

SECTION 1282. DECLARATION OF POLICY.

It is declared to be the policy of Congress to continue the Soil Conservation and Domestic Allotment Act, as amended, for the purpose of conserving national resources, preventing the wasteful use of soil fertility, and of preserving, maintaining, and rebuilding the farm and ranch

land resources in the national public interest; to accomplish these purposes through the encouragement of soil-building and soil-conserving crops and practices; to assist in the marketing of agricultural commodities for domestic consumption and for export; and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices. Feb. 16, 1938, 3 p.m., c. 30, Sec. 2, 52 Stat. 31.

SECTION 1335 (a) (1) (2). MARKETING QUOTAS—ESTABLISHMENT.

(a) Whenever in any calendar year the Secretary determines—

(1) that the total supply of wheat for the marketing year beginning in such calendar year will exceed the normal supply for such marketing year by more than 20 per centum; or

(2) that the total supply of wheat for the marketing year ending in such calendar year is not less than the normal supply for the marketing year so ending, and that the average farm price for wheat for three successive months of the marketing year so ending does not exceed 66 per centum of parity the Secretary shall, not later than May 15 of such calendar year, proclaim such fact, and during the marketing year beginning May 15, of the next succeeding calendar year and continuing throughout such marketing year, a national marketing quota shall be in effect with respect to the marketing of wheat. Marketing

quotas for any marketing year shall be in effect with respect to wheat harvested in the calendar year in which such marketing year begins notwithstanding that the wheat is marketed prior to the beginning of such marketing year. No marketing quota with respect to the marketing of wheat shall be in effect for the marketing year beginning July 1, 1938, unless prior to the date of the proclamation of the Secretary provision has been made by law for the payment, in whole or in part, in 1938 of parity payments with respect to wheat.

SECTION 1336: REFERENDUM.

Between the date of the issuance of any proclamation of any national marketing quota for wheat and July 25, the Secretary shall conduct a referendum, by secret ballot, of farmers who will be subject to the quota specified therein to determine whether such farmers favor or oppose such quota. If more than one-third of the farmers voting in the referendum oppose such quota, the Secretary shall, prior to the effective date of such quota, by proclamation suspend the operation of the national marketing quotas with respect to wheat. Feb. 16, 1938, 3 p.m., c. 30, Title III, Sec. 336, 52 Stat. 55; July 3, 1948, c. 827, Title II, Sec. 204(b), 62 Stat. 1256.

SECTION 1340(2):

Notwithstanding the other provisions of this chapter—

(2) During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of wheat. The rate of the penalty on wheat shall be 45 per centum of the parity price per bushel of wheat as of May 1 of the calendar year in which the crop is harvested.

APPENDIX B

Before BRATTON, Chief Judge, and PICKETT and BREITENSTEIN, Circuit Judges.

PER CURIAM

The United States brought these actions to recover penalties alleged to be due as a result of wheat grown by defendants during the years 1955 and 1956 in excess of their farm marketing quotas as defined by the provisions of the Agricultural Adjustment Act of 1938, as amended. 7 U.S.C.A., Sec. 1281, *et seq.* The cases involve the same facts and identical issues of law, and have been consolidated for disposition. These appeals are from summary judgments in favor of the United States.

The defendants contend that the Act is unconstitutional. The power of Congress to regulate agriculture in the manner it did is no longer open to debate. The constitutionality of the Act was upheld in *Wickard, Secretary of Agriculture, v. Filburn,* 317 U.S. 111, wherein the various objections made by the defendants here were considered at length. The court discussed without criticism the provision for a referendum of farmers conducted by the Secretary of Agriculture to determine whether they favor the quota established by him.[1] See also *Secretary of Agricul-*

1. In *Wickard v. Filburn,* 317 U.S. 111, 115-6, it was said:

"The Act further provides that whenever it appears that the total supply of wheat as of the beginning of any marketing year, beginning July 1, will exceed a normal year's domestic consumption and export by more than 35 per cent, the Secretary shall so proclaim not later than May 15 prior to the beginning of such marketing year; and that during the marketing year a compulsory national marketing quota shall be in effect with respect to the marketing of wheat.

ture v. *Central Roig Refining Co.*, 338 U.S. 604; *Mulford* v. *Smith*, 307 U.S. 38; *United States* v. *Kessinger*, 3 Cir., 250 F.2d 940, certiorari denied 356 U.S. 958; *Shafer* v. *United States*, 4 Cir., 229 F.2d, certiorari denied 351 U.S. 931.

The defendants also claim that their allotments were grossly erroneous, arbitrary, discriminatory, capricious and confiscatory, and that these objections raised issues of fact requiring a trial. The record discloses that the defendants, in each instance, were notified of the administrative determination of their farm wheat acreage allot-

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Between the issuance of the proclamation and June 10, the Secretary must, however, conduct a referendum of farmers who will be subject to the quota, to determine whether they favor or oppose it; and, if more than one-third of the farmers who will be subject to the quota, to determine whether they favor or oppose it; and, if more than one-third of the farmers voting in the referendum do oppose, the Secretary must, prior to the effective date of the quota, by proclamation suspend its operation.

"On May 19, 1941, the Secretary of Agriculture made a radio address to the wheat farmers of the United States in which he advocated approval of the quotas and called attention to the pendency of the amendment of May 26, 1941, which had at the time been sent by Congress to the White House, and pointed out its provisions for an increase in the loans on wheat to 85 per cent of parity. He made no mention of the fact that it also increased the penalty from 15 cents a bushel to one-half of the parity loan rate of the about 98 cents, but stated that 'Because of the uncertain world situation, we deliberately planted several million extra acres of wheat * * * Farmers should not be penalized because they have provided insurance against shortages of food.'

"Pursuant to the Act, the referendum of wheat growers was held on May 31, 1941. According to the required published statement of the Secretary of Agriculture, 81 per cent of those voting favored the marketing quota, with 19 per cent opposed."

At Page 130, the Court, in commenting on the referendum, stated:

"In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation."
(Footnotes omitted.)

ment, excess acreage of wheat, the normal yield of wheat per acre, and the farm marketing excess of wheat. They did not apply to a local committee for a review of these determinations. Under the provisions of the Act, courts are limited to a review of the action of a local review committee whose findings of fact, if supported by evidence, are conclusive, and the jurisdiction of the courts is limited to the consideration of questions of law. 7 U.S.C.A., Sec. 1366. The defendants having failed to exhaust their administrative remedies, the District Court was without jurisdiction to review the action taken with respect to their farm marketing excess of wheat. *Donaldson* v. *United States*, 6 Cir., 258 F.2d 591; *Miller* v. *United States*, 6 Cir., 242 F.2d 392, certiorari denied 355 U.S. 833; *United States* v. *Stangland*, 7 Cir., 242 F.2d 843; *Lee* v. *Roseberry*, 6 Cir., 200 F.2d 155; *Smith Land Co.* v. *Christensen*, 10 Cir., 148 F.2d 184; *United States* v. *Lillard*, (D.C., W.D. Mo.) 143 F. Supp. 113.

AFFIRMED.